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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,585

04/14/2004

James Kam Fu Kong

UHK-121XT

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23557 7590 07/21/2009  
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EXAMINER

JACKSON, BRANDON LEE

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

07/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/823,585	<b>Applicant(s)</b> FU KONG ET AL.	
	<b>Examiner</b> BRANDON JACKSON	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18, 19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-16, 18, 19, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 11-13 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This Office action is in response to amendments/arguments filed 2/23/2009. Currently, claims 1-16, 18-19, and 21-23 are pending in the instant application.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/14/2009 has been entered.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 15, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rios (US Patent 6,467,487). Rios a lateralization device (1) for providing a lateralization effect to a body portion (col. 3, lines 51-55) comprising a supporting member (3, 5, 9) adapted to be supported in a fixed position, a lateralization member (10) mounted on to the supporting member (3, 5,9) and extending laterally therefrom,

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and wherein the angular orientation of the lateralization member (10) is adjustable and the adjustment of the angular orientation is sufficient to alter the lateralization effect by repositioning the arm/hand of the user. The supporting member (3, 5, 9) comprises a post member (9) having a cylindrical outer wall (fig. 9). The lateralization member (10) is formed of a material that can resist a pressure exerted thereon and maintain an initial shape during use in order to maintain the user's arm in a fixed position during surgery. The lateralization device (1) further comprises a protection member (20) partially wrapped around the lateralization member (10). The supporting member (3, 5, 9) is fully capable of being placed at an eccentric position in relation to the lateralization member (10) when the lateralization member (10) is moved to the more to one side of the support member (3, 5, 9) than the other. The supporting member (3, 5, 9) is mounted onto a fracture table (4). The method step of claim 19 inherently would have resulted from the use of the device.

Claims 1 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Rush, Sr. (US Patent 3,745,996). Rush discloses a lateralization device (fig. 9) comprising a supporting member (168, 167) and a lateralization member (171) mounted onto the supporting member (168, 167) and extending laterally therefrom. The angular orientation of the lateralization member (171) with respect to a portion of the supporting member (168) is adjustable (173) in order to change the lateralization effect. The lateralization member (171) is substantially cylindrical and has a recessed portion where the supporting member (168, 167) fits into the lateralization member (171). The

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lateralization member (171) can rotate in relation to a portion of the supporting member (168).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rush, Sr. (US Patent 3,745,996) in view of Kurland (US Patent 4,653,482). Rush substantially discloses the claimed invention; see rejection to claim 1 above. However, Kurland discloses a lateralization device (fig. 1) comprising a supporting member (32, 33, 34) adapted to be supported in a fixed position, a lateralization member (18, 31) mounted onto the supporting member (32, 33, 34) and extending laterally therefrom to provide a lateralization effect to a user's body portion, wherein the lateralization effect varies in different lateral directions via moving the lateralization device (fig. 1) along the

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lateral slot (19). The supporting member (32, 33, 34) comprises a post member (32), wherein the post member (32) comprises a substantially cylindrical outer wall. The post member (32) comprises a plurality of interference fittings (fig. 4) on the outer wall for engaging with complementary interference fittings (fig. 4) formed on an inner wall of the lateralization member (18, 31). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the post member and lateralization member with complementary fittings, as taught by Kurland, in order to allow removal of the lateralization member for replacement when necessary.

Claims 8, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rush, Sr. (US Patent 3,745,996) in view of Kostich (US Patent 5,623,949). Rush substantially discloses the claimed invention; see rejection to claims 1 and 6-7 above. Rush further discloses the supporting member (168, 167) is mounted on a fracture table (121) Rush fails to disclose the recessed portion located in an eccentric position on the cylindrical member. However, Kostich teaches a positioning device (110) comprising eccentric cylindrical members (144). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the lateralization member of Kurland to have the shape, as taught by Kostich, in order to better receive body parts and provide the user with more comfort.

Claims 10, 14, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rush/Kostich, as applied to claim 16 above, and further in view of

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Roberts et al. (US Patent 6,385,802). Rush/Kostich fails to disclose a padded member around the lateralization member and the lateralization member being expandable.

However, Roberts teaches an operating room table (10) comprising a positioning member (fig. 2); wherein the positioning member comprises a rigid support (56) surrounded by a block material (54) subsequently wrapped in a chamber (52) containing an inflatable bladder (40) padding (48). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Rush/Kostich lateralization member to have an outer encasement (46), as taught by Roberts, in order to more precisely adjust the lateralization member for size and procedures of different patients.

### ***Allowable Subject Matter***

Claims 11-13 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record does not teach or suggest the number of interference fittings on the inner wall of the lateralization member is more than the complementary interference fittings on the outer wall of the supporting member.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772



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